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IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-845

RAYMOND J. PENOLI, JR.,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE SECOND APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1978

No. 78-845

RAYMOND J. PENOLI, JR.,
Petitioner,

v.

THE STATE OF CALIFORNIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOR THE SECOND APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

OPINIONS BELOW

The California Court of Appeal, Second Appellate District, Division Three, received petitioner's direct appeal from a judgment of conviction. In an unpublished opinion, the court found no merit to petitioner's contentions and affirmed the judgment. (Appen. B.)

JURISDICTION

This Court has jurisdiction to consider this case pursuant to 28 U.S.C. 1257, subdivision 3.

STATUTES INVOLVED

The applicable statutes involved are set forth in Appendix A.

QUESTIONS PRESENTED

1. Whether United States v. Chadwick (1977) 433 U.S. 1, indicates there is an expectation of privacy with regard to automobiles in the same manner that there would be in a locked trunk when Chadwick has nothing to do with automobile searches and does suggest that where automobiles are involved there is a lesser expectation of privacy.

2. Whether it is improper for police to conduct a warrantless search of a vehicle after it has been impounded where the police had probable cause to search the vehicle and exigent circumstances existed when the vehicle was stopped.

3. Whether California has an instrumentality doctrine justifying vehicle searches in violation of the Fourth Amendment or the doctrine is merely part of the determination of whether there is probable cause to search a vehicle.

STATEMENT OF THE CASE

In a five count information petitioner and Thomas Decker were charged in count I with burglary (Cal. Pen. Code, § 459), in counts II-IV with concealing stolen property (Cal. Pen. Code, § 496), and

in count V with possession of burglary tools (Cal. Pen. Code, § 466). (CT 1-4.)[1]

After entering a not guilty plea, petitioner's motion to suppress evidence pursuant to Penal Code section 1538.5 was heard and denied as was a motion to dismiss the information pursuant to Penal Code section 995.[2]

Thereafter, petitioner entered a guilty plea to the charge in count I as second degree burglary. All other counts were dismissed upon motion by the prosecution. (CT 6, 61-62.) Petitioner was sentenced to state prison for the term prescribed by law, but was granted bail pending appeal. (CT 64-66.)

Petitioner appealed, and the California Court of Appeal, Second Appellate District, Division Three, affirmed the conviction in an unpublished opinion. (Appen. B.) Thereafter, a hearing was denied by the California Supreme Court. (Appen. C.)

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1. CT refers to the clerk's transcript of the proceedings before the San Luis Obispo County Superior Court. RT refers to the reporter's transcript of the proceedings. If this Court desires a copy of these transcripts, respondent would be pleased to lodge them with this Court. All references are to California Statutes.

2. It was stipulated the court could consider the preliminary hearing transcript in ruling on the motion to suppress. (CT 61; RT 109-111.) The preliminary hearing is reported at pages 2-104 of the reporter's transcript.

STATEMENT OF FACTS

On October 10, 1976, Warren Davey was staying at the Spyglass Motel in Pismo Beach, California. He had a gold 1970 Lincoln parked by the motel. At about 10:00 a.m. he went out on the motel balcony and saw a white Cadillac El Dorado with a black top parked behind the trunk of his car. The passenger door of the Cadillac was open and right behind the trunk of Davey's car. Davey also noted the trunk of his Lincoln was open about four inches. The man standing by the cars was Decker. Decker had sandy hair, was about six feet tall, and about thirty years old.

Decker apparently saw Davey and spoke to another man inside the Cadillac. This man was Penoli. Thereafter, they drove away. Davey checked the trunk and found a camera and camera case, his wife's coat, and an overnight case were missing from the trunk. Davey had closed the trunk the night before and had locked the car. Davey called the police, told them what had happened, and indicated he had seen the white Cadillac turn right on the freeway. He indicated the Cadillac was a white El Dorado with a black top, and had two men inside. One was six feet tall and had light, sandy hair. The other suspect was six feet tall and had dark hair. (RT 4-9, 19.)

At about this same time, David Griffith of the Pismo Beach Police Department received a call indicating he should be on the lookout for a black over white Cadillac which had been involved in a "459 auto" at the Spyglass Motel. The bulletin indicated the vehicle had two male occupants. One occupant had light colored hair, and both occupants were white. Thereafter, he observed a black over white Cadillac with two male occupants

and noted the driver had light colored hair. He followed the vehicle, requested a backup, and eventually stopped the vehicle. Penoli and Decker were in the vehicle. (RT 49-53.)

Officer Holt of the Pismo Beach Police assisted in the stop of the vehicle and contacted Decker and Penoli. They denied having committed the burglary. Holt had his dispatcher contact Davey so Davey could come to the scene. Davey arrived at the scene about five to ten minutes later. This was only 25 minutes after the burglary.

Davey told Holt he had seen a man fitting Decker's description by his car and Decker and Penoli had removed property from his car. Davey said Penoli had been driving the Cadillac and Decker had been the passenger. Davey said he had seen Decker close the trunk hood on his car, get in the Cadillac, and leave the scene. (RT 63-68, 10-13, 88.) After Davey had identified Decker and Penoli, Holt arrested them for burglary. Various items which were similar to items used for picking locks were found on Decker and Penoli. (RT 68-77.)

Decker and Penoli refused to consent to a search of the Cadillac, the Cadillac was taken to a gas station, and the trunk was opened. Decker and Penoli were transported to the police station. The trunk was searched after the car had been impounded. Various items, including the property taken from Mr. Davey, were found in the trunk. The glove compartment was also searched. (RT 78-82.)

At the motion to suppress, Decker and Penoli stipulated Officer Holt had a subjective belief, whether reasonable or unreasonable, that the trunk contained contraband. (RT 110-111.)

ARGUMENT

I

NOTHING IN UNITED STATES v. CHADWICK (1977) 433 U.S. 1, INDICATES THERE IS AN EXPECTATION OF PRIVACY WITH REGARD TO AUTOMOBILES IN THE SAME MANNER THAT THERE WOULD BE IN A FOOTLOCKER

Relying on United States v. Chadwick (1977) 433 U.S. 1, petitioner contends there is a right to privacy with regard to automobiles similar to that in locked trunks and police thus may not conduct a warrantless search of a vehicle. (Petn. 6-8.) This contention is without merit.

Prior to United States v. Chadwick, supra, this Court repeatedly upheld the right of the police to conduct warrantless searches of vehicles under varying circumstances. (See Carroll v. United States (1925) 267 U.S. 132, 153-154; Chambers v. Maroney (1970) 399 U.S. 42; Cardwell v. Lewis (1974) 417 U.S. 583, 589.) The rationale behind these rulings and similar rulings was that there was a different expectation of privacy with regard to automobiles and a home or office.

As this Court noted in South Dakota v. Opperman (1976) 428 U.S. 364, 367-368:

> "This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment. Although automobiles are 'effects' and thus within the reach of the Fourth Amendment, Cady v. Dombrowski, 413 U.S. 433, 439 (1973), warrantless examinations of automobiles

> have been upheld in circumstances in which a search of a home or office would not. Cardwell v. Lewis, 417 U.S. 583, 589 (1974); Cady v. Dombrowski, supra, at 439-440; Chambers v. Maroney, 399 U.S. 42, 48 (1970).
>
> "The reason for this well-settled distinction is twofold. First, the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible. Carroll v. United States, 267 U.S. 132, 153-154 (1925); Coolidge v. New Hampshire, 403 U.S. 443, 459-460 (1971). But the Court has also upheld warrantless searches where no immediate danger was presented that the car would be removed from the jurisdiction. Chambers v. Maroney, supra, at 51-52; Cooper v. California, 386 U.S. 58 (1967). Besides the element of mobility, less rigorous warrant requirements govern because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. In discharging their varied responsibilities for ensuring the public safety, law enforcement officials are necessarily brought into frequent contact with automobiles. Most of this contact is distinctly noncriminal in nature. Cady v. Dombrowski, supra, at 442. Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection

and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

"The expectation of privacy as to automobiles is further diminished by the obviously public nature of automobile travel. Only two Terms ago, the Court noted:

"'One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view.' Cardwell v. Lewis, supra, at 590." (Footnote omitted.)

Nothing in United States v. Chadwick, supra, changed the well settled view of this Court there was a lesser expectation of privacy with regard to automobiles than offices, homes, or other items.

There, this Court merely held a footlocker could not be searched without a search warrant and noted the search could not be justified as a search incident to arrest or under a theory similar to the automobile

exception to the warrant requirement.3/ Indeed, in concluding a theory similar to the automobile exception to the warrant requirement could not be used to justify a search of a footlocker, this Court reaffirmed its prior holding justifying warrantless searches of vehicles because of the lesser expectation of privacy an individual has as to an automobile.

"But this Court has recognized significant differences between motor vehicles and other property which permit warrantless searches of automobiles in circumstances in which warrantless searches would not be reasonable in other contexts. Carroll v. United States, 267 U.S. 132 (1925); Preston v. United States, supra, at 366-367; Chambers v. Maroney, 399 U.S. 42 (1970). See also South Dakota v. Opperman, 428 U.S. 364, 367 (1976).

"Our treatment of automobiles has been based in part on their inherent mobility, which often makes obtaining a judicial warrant impractical. Nevertheless, we have also sustained 'warrantless searches of vehicles . . . in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent.' Cady v. Dombrowski, 413 U.S. 433, 441-442 (1973); accord,

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3. The government never argued the search was justified under the automobile exception to the warrant requirement. (United States v. Chadwick, supra, at p. 11; see too United States v. McGrath (S.D.N.Y. 1978) 448 F.Supp. 1338, 1342.)

South Dakota v. Opperman, supra, at 367; see Texas v. White, 423 U.S. 67 (1975); Chambers v. Maroney, supra; Cooper v. California, 386 U.S. 58 (1967).

"The answer lies in the diminished expectation of privacy which surrounds the automobile:

"'One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view.' Cardwell v. Lewis, 417 U.S. 583, 590 (1974) (plurality opinion).

"Other factors reduce automobile privacy. 'All States require vehicles to be registered and operators to be licensed. States and localities have enacted extensive and detailed codes regulating the condition and manner in which motor vehicles may be operated on public streets and highways.' Cady v. Dombrowski, supra, at 441. Automobiles periodically undergo official inspection, and they are often taken into police custody in the interests of public safety. South Dakota v. Opperman, supra, at 368.

"The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are

not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

"Nor does the footlocker's mobility justify dispensing with the added protections of the Warrant Clause. Once the federal agents had seized it at the railroad station and had safely transferred it to the Boston Federal Building under their exclusive control, there was not the slightest danger that the footlocker or its contents could have been removed before a valid search warrant could be obtained.[7] The initial seizure and detention of the footlocker, the validity of which respondents do not contest, were sufficient to guard against any risk that evidence might be lost. With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.[8]

"[7] This may often not be the case when automobiles are seized. Absolutely secure storage facilities may not be available, see

South Dakota v. Opperman, 428 U.S. 364 (1976); Cady v. Dombrowski, 413 U.S. 433 (1973), and the size and inherent mobility of a vehicle makes it susceptible to theft or intrusion by vandals.

"[8] Respondents' principal privacy interest in the footlocker was, of course, not in the container itself, which was exposed to public view, but in its contents. A search of the interior was therefore a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker. Though surely a substantial infringement of respondents' use and possession, the seizure did not diminish respondents' legitimate expectation that the footlocker's contents would remain private.

"It was the greatly reduced expectation of privacy in the automobile, coupled with the transportation function of the vehicle, which made the Court in Chambers unwilling to decide whether an immediate search of an automobile, or its seizure and indefinite immobilization, constituted a greater interference with the rights of the owner. This is clearly not the case with locked luggage." (United States v. Chadwick, supra, at pp. 12-14.)

Accordingly, nothing in Chadwick supports the conclusion this Court should abandon the power of law enforcement officials to conduct warrantless searches of vehicles under varying circumstances. Accordingly, police may still conduct warrantless

searches of vehicles based upon probable cause and the existence of exigent circumstances. (See Chambers v. Maroney, supra; Carroll v. United States, supra.)

Support for our argument here may also be found in recent cases which indicate nothing in Chadwick overrules the prior decision of this Court in Chambers v. Maroney, supra, authorizing warrantless searches of vehicles based upon probable cause and the existence of exigent circumstances. (United States v. Trejo-Zambrano (9th Cir. 1978) 582 F.2d 460, 463; United States v. McLaughlin (5th Cir. 1978) 578 F.2d 1180, 1182-1183; United States v. Stevie (8th Cir. 1977) 578 F.2d 204, 208.)

Even assuming arguendo Chadwick somehow stood for the proposition asserted by petitioner, it would not assist petitioner here. The search in the instant case occurred long before the date Chadwick was decided (June 21, 1977) and it has been repeatedly held that Chadwick does not apply to searches, such as this one, which occurred before the decision in Chadwick. (United States v. Berry (7th Cir. 1978) 571 F.2d 2, 3; United States v. Choate (9th Cir. 1978) 576 F.2d 165, 182, n. 20 (U.S. appeal pending); United States v. Diaz (2d Cir. 1978) 577 F.2d 821, 824.)

Thus, petitioner's first contention is without merit.

II

POLICE MAY PROPERLY CONDUCT A WARRANTLESS SEARCH OF A VEHICLE AFTER IT HAS BEEN IMPOUNDED

Petitioner next contends a locked trunk of a vehicle is like the locked trunk

in Chadwick and police should thus not be permitted to search the trunk of a vehicle after it has been impounded as there are no exigent circumstances existing at this time. (Petn. 8-9.)

As noted in Argument I, supra, Chadwick has nothing to do with automobile searches, but does reaffirm the automobile exception to the warrant requirement. Moreover, even if Chadwick did affect such searches, it does not apply to this search which occurred before the Chadwick decision. Thus, the only question here is whether the trunk search of an impounded vehicle was proper under existing law regarding automobile searches.

Prior decisions of this Court have repeatedly held police may conduct a warrantless search of a vehicle where the police have probable cause to search the automobile and exigent circumstances exist at the time. Moreover, the police may impound a vehicle under these circumstances and search the vehicle later at the police station. (Chambers v. Maroney, supra, 399 U.S. 42, 47-52; Cardwell v. Lewis, supra, 417 U.S. 583, 592-596; Texas v. White (1975) 423 U.S. 67; South Dakota v. Opperman, supra.) Indeed, Texas v. White, supra, and United States v. Chadwick, supra, suggest this Court would now uphold warrantless vehicle searches where there are no exigent circumstances if the police have probable cause to search the vehicle. (See United States v. McLaughlin, supra, at p. 1183; United States v. Robinson (D.C. Cir. 1976) 533 F.2d 578, 586 (conc. opn. of Robb, J.).)

The record in the instant case clearly reveals the police had probable cause to search the vehicle. The Cadillac was parked right behind Mr. Davey's car at the

motel. Mr. Davey saw Decker standing between the Cadillac and Davey's car. Mr. Davey's trunk had been opened and various items from the trunk were found to be missing. The Cadillac was stopped in broad daylight about 15 minutes later. Decker and Penoli were inside and had burglary implements on their persons.

All these facts lead to the reasonable conclusion Decker and Penoli had taken items from Davey's car and had not, as yet, had time to dispose of them. Thus, it was reasonable to conclude they were using the vehicle to hide stolen merchandise. Under these circumstances, the police had probable cause to search the vehicle for the stolen items. Exigent circumstances also existed at the time of the stop as the vehicle could have been removed by an unknown accomplice if the police had not seized it. (People v. Laursen (1972) 8 Cal.3d 192, 201, fn. 8; People v. Hill (1974) 12 Cal.3d 731, 750-753; People v. Dumas (1973) 9 Cal.3d 871, 885; Chambers v. Maroney, supra; Texas v. White, supra.)

Under these circumstances the subsequent search of the trunk at the station was proper. (Texas v. White, supra; Chambers v. Maroney, supra; People v. Hill, supra.)

III

CALIFORNIA DOES NOT HAVE A SEPARATE INSTRUMENTALITY DOCTRINE WHICH VIOLATES THE FOURTH AMENDMENT RIGHTS OF PERSONS

Petitioner's final argument is somewhat confusing. In essence, he contends California has developed a doctrine which has

not been sanctioned by this Court. This doctrine permits police to search a vehicle as an instrumentality of a crime in violation of an individual's Fourth Amendment rights.

As noted earlier this Court has repeatedly upheld warrantless searches of vehicles based upon probable cause and exigent circumstances. In interpreting these rulings, California courts have discussed various ways of determining whether the police have probable cause to search a vehicle. In these discussions the courts have concluded probable cause to search exists where the vehicle is an instrumentality of the crime. (People v. Laursen, supra, 8 Cal.3d 192, 201; People v. Hill, supra, 12 Cal.3d 731, 751.) This doctrine is presumably based on the compelling logic that where a car is an instrumentality of a crime, i.e., used as a getaway car or to otherwise perpetrate the crime, it is likely the vehicle will contain evidence of the crime or contraband.

Accordingly, the instrumentality doctrine is nothing more than a way of determining probable cause to search a vehicle. Its existence, thus, does not impinge on any right to privacy which may exist in an automobile. This Court has held there is no right to privacy in moving vehicles where police have probable cause to search the vehicle. (Chambers v. Maroney, supra; Texas v. White, supra.)4/

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4. Petitioner contends if the instrumentality doctrine had been used in Chadwick the footlocker could have been searched. However, contends petitioner, such a result would have been inconsistent with Chadwick. This contention is a non sequitur. Chadwick did not involve an automobile search as the

CONCLUSION

For the foregoing reasons respondent requests the petition for writ of certiorari be denied.

Respectfully submitted,

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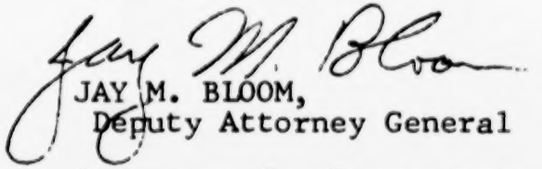

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4. (Continued)

government did not even contend the brief contact the locked trunk had with a car turned the case into an automobile search case. Moreover, Chadwick obviously did not involve a situation where the vehicle was an instrumentality of the crime. Thus, nothing in Chadwick has anything to do with the instrumentality doctrine.

APPENDIX A

UNITED STATES CONSTITUTION

AMENDMENT IV

Seizures, Searches and Warrants

[Section 1.] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Proposed September 25, 1789; ratified December 15, 1791.

CALIFORNIA STATUTES

Penal Code Sections

§ 459.

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code when the doors of such vehicle are locked, aircraft as defined by the Harbors and Navigation Code, mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

§ 466.

Every person having upon him or in his possession a picklock, crow, keybit, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named so that the same will fit or open the lock of a building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 459 shall be deemed to be a building within the meaning of this section.

§ 496.

1. Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year; provided, that where the district attorney or the grand jury determines that such action would be in the interests of justice, the district attorney or the grand jury, as the case may

be, may, if the value of the property does not exceed two hundred dollars ($200), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in the county jail not exceeding one year. . . .

§ 995.

The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

If it be an indictment:

1. Where it is not found, endorsed, and presented as prescribed in this code.

2. That the defendant has been indicted without reasonable or probable cause.

If it be an information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That the defendant had been committed without reasonable or probable cause.

§ 1538.5.

(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure . . . .

APPENDIX B

[Filed June 28, 1978]

NOT TO BE PUBLISHED IN
THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

2D CRIM. NO. 31380
(Sup.Ct.No. 10226)

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS LEROY DECKER and
RAYMOND JOSEPH PENOLI,

Defendants and Appellants.

THE COURT*

Codefendants, Thomas Leroy Decker and Raymond Joseph Penoli, pleaded guilty to second degree burglary (Pen. Code, § 459). Prior thereto they unsuccessfully moved to suppress evidence (Pen. Code, § 1538.5). They appeal, contending in essence, that

*Before Klein, P.J., Cobey, J., and Allport, J.

(1) their initial detention was illegal, (2) they were arrested without probable cause, and (3) the warrantless search of their vehicle after it was impounded was unlawful.

We review the evidence in the light most favorable to the order denying suppression as is required by the usual rule governing appellate review. (People v. James, 19 Cal.3d 99, 107.) On October 10, 1976, at about 10:00 a.m. Warren Davey was standing on the second floor balcony outside of his room at the Spyglass Motel in Pismo Beach when he noticed that appellants' Cadillac automobile was parked perpendicular to the rear of his car. The right front door of the Cadillac was open opposite the trunk of Davey's car and appellant Decker was standing between the two cars, his hands holding the trunk lid which was opened about four inches.

As Davey looked on, Decker glanced up at him standing 20 feet above and immediately closed the trunk lid. After briefly speaking with appellant Penoli, who was seated behind the steering wheel of the Cadillac, they drove away. Davey then checked the contents of the trunk and discovered his camera and camera case, his wife's coat and an overnight case were missing. He had locked these items in the trunk of his car the night before.

Davey telephoned the local police and reported, "I believe someone had gotten into my trunk and taken my camera case." He described the car and its occupants as "a white Cadillac, El Dorado, with a black top and had two men inside, and one of them was six feet and light hair, light sandy hair, and the other one was roughly six feet and had dark hair." Shortly thereafter Pismo Beach Police Officer David Griffith received a bulletin over his police radio to

"be on the lookout for a black over white Cadillac that had just been involved in a 459 auto at Spyglass Motel . . . [containing] two male occupants . . . one with light-colored hair."

At approximately 10:30 a.m. Officer Griffith observed appellants in the Cadillac heading south from Pismo Beach on Interstate Highway 101. He ordered Decker, who was driving, to stop and exit the car. At this time Officer Gary Holt arrived at the scene and alerted the police dispatcher to summon the victim, Davey, to the location. Approximately five or ten minutes later Davey arrived, identified himself to Officer Holt, and made a positive identification of appellants and their car. Appellants were arrested and searched[1] and their car was impounded at a nearby gas station. One hour later Officer Holt had a locksmith open the trunk and recovered Davey's property.[2]

The contention that Officer Griffith had insufficient information to detain appellants is meritless. In the instant matter, Officer Griffith obtained knowledge through "official channels" that a burglary had taken place a short time before observing appellants on the highway. He knew the general description of the suspects and the car used by them.

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1. A search of Decker's jacket pocket uncovered a set of altered automobile keys used for "picking" locks on cars.

2. The locked glove box was also opened and searched but no seizable evidence was found therein.

From this set of facts, Officer Griffith could "reasonably entertain a sufficient good faith suspicion to warrant a detention of the occupants for investigative purposes." (People v. Flores, 12 Cal.3d 85, 91; People v. Waters, 30 Cal.App.3d 354, 361.) Further, since Griffith was the first officer on the scene to confront appellants, he was justified in requiring Decker to alight from the car as a safety precaution. (See People v. Ortega, 2 Cal.App.3d 884, 892; People v. Figueroa, 268 Cal.App.2d 721, 726-727.)

Appellants' argument that the victim was an unreliable informant and the information he supplied was insufficient to constitute probable cause to arrest them is equally meritless. Prior to arresting appellants, Officer Holt had the victim, Davey, summoned to the detention location. When he arrived the victim provided Officer Holt with a detailed description of the crime and made a positive identification of the car and appellants. Mr. Davey, as a citizen-informant, is presumed to be reliable and there is nothing contained in this record to challenge his credibility. (People v. Ramey, 16 Cal.3d 263, 269.) We find the information supplied by Davey amply supports the court's implied finding that probable cause to arrest appellants existed. (See People v. Ramey, supra, at pp. 269, 270; People v. Amos, 70 Cal.App.3d 562, 566-567.)

Lastly, appellants contend that the warrantless search of their impounded vehicle was unlawful. Here appellants were stopped on the highway driving away from the city only one-half hour after the burglary was reported. Under these circumstances the officers had reason to believe appellants had not yet disposed of the stolen goods and the items were probably concealed

somewhere in the car. (See People v. Dumas, 9 Cal.3d 871, 885.) They were then entitled to conduct an immediate warrantless search of all areas of the car. (People v. Laursen, 8 Cal.3d 192, 201.) The fact that the trunk was opened and searched only after appellant's car was removed from the open highway and impounded does not invalidate the search. (People v. Hill, 12 Cal.3d 731, 751 and cases therein; People v. Stafford, 29 Cal.App.3d 940, 947.)

The judgments[3] are affirmed.

NOT TO BE PUBLISHED IN
THE OFFICIAL REPORTS

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3. Appellant Decker was granted probation, an order deemed a judgment for appellate purposes. (Pen. Code, § 1237.)

APPENDIX C

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

AUG 24 1978 San Diego

I have this day filed Order

CR. D.

No.

Entered by

Date

HEARING DENIED

In re: 2 Crim. *No.* 31380

People

vs.

Decker and Penoli

78DA0137
MV
8-24

Respectfully,

G. E. BISHEL
Clerk

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